

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Civil Act. No.**

**HALINA HELENA PIETA;**

**Plaintiff.**

**v.**

**United States Department of Homeland Security**

**United States Citizenship and Immigration Services**

**Defendants.**

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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Plaintiff Halina Helena Pieta, files this complaint for declaratory and injunctive relief for the expedited processing and release of agency records requested by Plaintiff from the U.S. Citizenship and Immigration Services.

**I. JURISDICTION**

1. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(E)(iii). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

## **II. PARTIES**

2. Plaintiff Halina Helena Pieta is a 55 year-old native and citizen of Poland who is present in the United States. She presently resides in Arvada, Colorado. She entered the United States in 1995 and overstayed her visitor's visa, which expired on May 18, 1996.

Plaintiff has requested documents regarding her immigration history for purposes of pursuing adjustment of status.

3. Defendants U.S. Department of Homeland Security and U.S. Citizenship and Immigration Services are "agencies" within the meaning of 5 U.S.C. § 552(f).

Defendants have failed to produce the requested documents within the statutory time limit prescribed by 5 U.S.C. § 552(a)(6)(A)(I) and have not notified plaintiff of unusual circumstances that would justify an extension under 5 U.S.C.(6)(B).

## **III. LEGAL FRAMEWORK**

4. FOIA was passed with the intent to allow individuals access to documents under agency control. When a request for information is made to an agency, that agency has 20 days to respond to the request. 5 U.S.C. 552(a)(6)(A)(I). The agency may grant itself a 10 work day extension where "unusual circumstances" exist. 5 U.S.C. 552(a)(6)(A)(I). Where an agency has failed to respond within the prescribed period, the person making the request is deemed to have exhausted his administrative remedies. 5 U.S.C. 552(a)(6)(C)(i). On complaint, the U.S. district court may "enjoin the agency from withholding agency records and...order the production of any agency records improperly withheld from complainant." 5 U.S.C. 552(a)(4)(B).

## **IV. FACTS**

5. On May 12, 2008 Plaintiff filed a FOIA request with Defendants. Defendants acknowledge receipt of that request on May 12, 2008 (Exhibit A). 20 working days from May 12, 2008 passed on June 9, 2008. As of November 7, 2008, Plaintiff has received no response to his request. If Defendants granted themselves a 10 working day extension on grounds of unusual circumstances, Plaintiff was never notified. Furthermore, that extension would have expired on June 23, 2008.

## **V. CLAIMS FOR RELIEF**

### **Count One DECLARATORY JUDGEMENT ACT**

6. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 5 above.
7. Plaintiff contends that Defendants' actions violate 5 U.S.C. 552(a)(6)(A)(I).

### **Count Two INJUNCTIVE RELIEF**

8. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 5 above.
9. Plaintiff contends that Defendant should be required to expedite Plaintiff's FOIA request and make the requested documentation available to plaintiff forthwith.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully asks the Court to:

1. Assume jurisdiction over this matter;
2. Issue an Order requiring the Defendants respond to Plaintiff's request under 5 U.S.C. § 552 forthwith;
3. Grant reasonable attorney's fees pursuant to 5 U.S.C. § 552(a)(4)(E).
4. Grant such other and further relief as may be just and proper.

Respectfully Submitted,

By: s/Jeff D. Joseph  
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Attorney for Plaintiff

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**CERTIFICATE OF SERVICE**

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I, Jeff D. Joseph, hereby certify that on November 26, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email address:

[Lisa.Christian@usdoj.gov](mailto:Lisa.Christian@usdoj.gov),

and I hereby certify that I have mailed a hard copy of the document to the above individual pursuant to Fed.R.Civ.P. 4 via first class mail on November 26, 2008 to:

1225 17<sup>th</sup> Street, Suite 700  
Denver, CO 80202

and I hereby certify that I have mailed the document or paper to the following non CM/ECF participants via first class mail on November 26, 2008:

Michael Mukasey  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530-0001

Hugo Teufel III  
Chief FOIA Officer  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Drive SW, Building 410  
STOP-0550  
Washington, DC 20528-0550

Michael Chertoff, Jonathan Scharfen, Acting Director USCIS, c/o:

Office of the General Counsel  
United States Department of Homeland Security  
Washington D.C. 20528

Chief of Commercial and Administrative Law Division  
Office of the Principal Legal Advisor  
Citizenship and Immigration Services  
United States Department of Homeland Security  
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Respectfully submitted,

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